

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In Re:)
) Case No. BKY 04-60106
DANIEL S. MILLER,)
) Chapter 11 Case
Debtor.)

**OBJECTIONS OF THE UNITED
STATES OF AMERICA TO CONFIRMATION OF
THE DEBTOR'S MODIFIED CHAPTER 11 PLAN
OF REORGANIZATION DATED AUGUST 4, 2004**

To: ALL PARTIES ON THE ATTACHED SERVICE LIST

Now comes the United States of America, Internal Revenue Service (hereinafter "IRS"), by and through its attorneys, Thomas B. Heffelfinger, United States Attorney for the District of Minnesota, and Roylene A. Champeaux, Assistant United States Attorney, and hereby objects to the confirmation of the debtor's Modified Chapter 11 Plan of Reorganization dated August 4, 2004 (hereinafter "the Plan") as follows:

1. The Chapter 11 confirmation hearing is scheduled for September 29, 2004 at 10:00 a.m. in Courtroom No. 2, United States Bankruptcy Court, 205 P.O. Building, 118 South Mill Street, Fergus Falls, Minnesota 56537.

2. This Court has jurisdiction over these objections pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Loc. R. Bankr. P. (D. Minn.) 1070-1. This proceeding is a core

proceeding. A petition commencing this Chapter 11 case filed February 3, 2004. This case is now pending in this Court.

3. These objections arise under 11 U.S.C. §§ 1129, 1141 and Fed. R. Bankr. P. 3018 and 3020(b)(1). These objections are filed under Fed. R. Bankr. P. 9014 and Loc. R. Bankr. P. (D. Minn.) 3020-1, 9013-2 and 9013-3.

4. The IRS has an unsecured priority claim of \$11,637.70 and a general unsecured claim of \$2,718.71 against this debtor. The total claim is \$14,356.41, as set forth in the filed Proof of Claim of the IRS, a copy of which is attached hereto and incorporated herein by reference as Exhibit A.

5. No objections to the IRS Proof of Claim have been filed.

6. The IRS may have additional unsecured priority claims due from this debtor as explained in the Affidavit of Jane E. Pearson which is attached as Exhibit B. These claims are undetermined because the debtor has not filed Form 1040 federal income tax returns for the years 1999, 2000, 2001, 2002 and 2003.

7. Because of the debtor's unfiled federal tax returns, the United States is unable to determine if the Plan complies with 11 U.S.C. § 1129(a)(11).

8. The Plan fails to comply with 11 U.S.C. § 1129(a)(9)(C) in that the Plan fails to provide for the payment of the IRS priority claim.

9. The United States objects to the language contained in Article VIX of the Plan that provides for a "super" discharge beyond that provided by 11 U.S.C. § 1141.

10. A separate memorandum of law accompanies these objections.

WHEREFORE, for the foregoing reasons, the United States of America prays that the Modified Chapter 11 Plan of Reorganization dated August 4, 2004 filed by this debtor be denied confirmation.

Dated: September 16, 2004

THOMAS B. HEFFELFINGER
United States Attorney

/e/ Roylene A. Champeaux
BY: ROYLENE A. CHAMPEAUX
Attorney ID Number 154805
Assistant United States Attorney
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5685

Attorneys for the United States
of America - IRS

VERIFICATION

I, Jane E. Pearson, a Bankruptcy Specialist for the Internal Revenue Service, the movant named in the foregoing Chapter 11 Bankruptcy for Daniel Miller, Danielson Grain, Danielson Trucking, Bankruptcy No. 04-60106, declares under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 15, 2004

Signed:

A handwritten signature in cursive script, appearing to read "Jane E. Pearson".

JANE E. PEARSON
BANKRUPTCY SPECIALIST

UNITED STATES BANKRUPTCY COURT		DISTRICT OF MINNESOTA	PROOF OF CLAIM
Name of Debtor DANIEL MILLER		Case Number 04-60106	<div style="border: 1px solid black; padding: 10px; transform: rotate(-15deg); display: inline-block;"> RECEIVED 2004 JUN -1 AM 10:50 US BANKRUPTCY COURT FEDERAL BUILDING </div>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.			
Name of Creditor (The person or other entity to whom the debtor owes money or property): Department of the Treasury - Internal Revenue Service		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: Internal Revenue Service Internal Revenue Service 316 North Robert Street Stop 5700STP St. Paul, MN 55101		Telephone number: (651) 312-7993 Creditor #:	
Account or other number by which creditor identifies debtor: see attachment		Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____	
1. Basis for Claim <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other _____ </div> <div style="width: 45%;"> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of SS #: _____ Unpaid compensation for services performed from _____ to _____ <div style="display: flex; justify-content: space-between; width: 100%;"> (date) (date) </div> </div> </div>			
2. Date debt was incurred: see attachment		3. If court judgment, date obtained:	
4. Total Amount of Claim at Time Case Filed: \$ <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <div style="text-align: center;"> <u>2,718.71</u> <small>(unsecured)</small> </div> <div style="text-align: center;"> <u>11,637.70</u> <small>(secured)</small> </div> <div style="text-align: center;"> <u>11,637.70</u> <small>(priority)</small> </div> <div style="text-align: center;"> <u>14,356.41</u> <small>(Total)</small> </div> </div> <p>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.</p> <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.			
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		7. Unsecured Priority Claim. <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ <u>11,637.70</u> Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,925)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>* Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>	
6. Unsecured Nonpriority Claim \$ <u>2,718.71</u> <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or part of your claim is entitled to priority.		THIS SPACE IS FOR COURT USE ONLY <div style="border: 2px solid black; padding: 10px; margin: 10px auto; width: 150px;"> EXHIBIT <div style="border: 1px solid black; padding: 5px; display: inline-block; margin-top: 10px;"> A </div> </div>	
8. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.			
9. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.			
10. Date-Stamped Copy: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.			
Date 05/27/2004	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <div style="text-align: center; margin-top: 10px;"> 41-02525 Bankruptcy Specialist </div>		

Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service

Form 10
Attachment

In the Matter of: DANIEL MILLER
DANIELSON GRAIN/DANIELSON TRUCKING
HWY 2 EAST BOX 421
E GRAND FORKS, MN 56721

Docket Number

04-60106

Type of Bankruptcy Case

Chapter 11

Date of Petition

02/03/2004

The United States has not identified a right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to setoff against this claim debts owed to this debtor by this or any other federal agency. All rights of setoff are preserved and will be asserted to the extent lawful.

Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-8846	INCOME	12/31/2000	1 UNASSESSED LIABILITY	\$3,694.00	\$0.00
XXX-XX-8846	INCOME	12/31/2001	1 UNASSESSED LIABILITY	\$2,647.90	\$0.00
XXX-XX-8846	INCOME	12/31/2002	1 UNASSESSED LIABILITY	\$2,647.90	\$0.00
XXX-XX-8846	INCOME	12/31/2003	1 UNASSESSED LIABILITY	\$2,647.90	\$0.00
				<u>\$11,637.70</u>	<u>\$0.00</u>

Total Amount of Unsecured Priority Claims: **\$11,637.70**

Unsecured General Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-8846	INCOME	12/31/1997	09/14/1998	\$0.00	\$49.87
XXX-XX-8846	INCOME	12/31/1999	1 UNASSESSED LIABILITY	\$2,647.90	\$0.00
				<u>\$2,647.90</u>	<u>\$49.87</u>

Penalty to date of petition on unsecured general claims (including interest thereon) \$20.94

Total Amount of Unsecured General Claims: **\$2,718.71**

1 UNASSESSED LIABILITY TAX CLAIMS HAVE BEEN FILED BECAUSE THE DEBTOR HAS FAILED TO FILE THE RETURN(S) FOR THE LISTED PERIODS. AS SOON AS THE DEBTOR FILES THE RETURN(S) WITH THE I.R.S. AS REQUIRED BY LAW, THIS CLAIM WILL BE ADJUSTED AS NECESSARY.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION
BKY No. 04-60106

DANIEL MILLER,
DANIELSON GRAIN,
DANIELSON TRUCKING,

Plaintiff,

v.

INTERNAL REVENUE SERVICE,

Defendant.

AFFIDAVIT

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

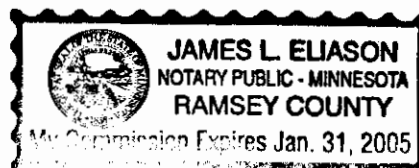
I, Jane E. Pearson, Bankruptcy Specialist, being first duly sworn, deposes and says:

1. I am employed by Territory 9 of the Internal Revenue Service Small Business/Self-Employed Division.
2. One of my duties is to review Chapter 13 Bankruptcy petitions and the Government records regarding the petitioner.
3. I have determined Daniel Miller has not filed the federal income tax returns for the calendar years ending December 31, 1999, December 31, 2000, December 31, 2001 December 31, 2002 and December 31, 2003.

FURTHER YOUR AFFIANT SAYETH NOT.

Jane E. Pearson

Subscribed and Sworn to Before Me
This 16th Day of September, 2004.



EXHIBIT

B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
SIXTH DIVISION

In Re:)
) Case No. BKY 04-60106
DANIEL S. MILLER,)
) Chapter 11 Case
Debtor.)

**MEMORANDUM IN SUPPORT OF
OBJECTIONS OF THE UNITED STATES OF
AMERICA TO CONFIRMATION OF THE DEBTOR'S MODIFIED
CHAPTER 11 PLAN OF REORGANIZATION DATED AUGUST 4, 2004**

The United States of America, Internal Revenue Service (hereinafter "IRS") submits this memorandum in support of its objections to the confirmation of the debtor's Modified Chapter 11 Plan of Reorganization dated August 4, 2004.

ARGUMENT

In this case, the IRS has filed a proof of claim for priority and general unsecured taxes. Since no objections have been made to the IRS claims, they are deemed allowed under 11 U.S.C. § 502(a).

The proponent of a proposed Plan bears the burden of establishing that the proposed Plan satisfies all of the statutory requirements for confirmation. In re Internet Navigator, Inc., 289 B.R. 128, 131 (Bankr. N.D. Iowa 2003).

The standards for confirmation are contained at 11 U.S.C. § 1129. To the extent relevant to the objections of the United States, that section states:

- (a) The Court shall confirm a Plan only if all of the following requirements are met:
 - (1) The Plan complies with the applicable provisions of this title.
 - (2) The proponent of the plan complies with the applicable provisions of this title.

. . . .

- (9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that -
 - (A) with respect to a claim of a kind specified in section 507(a)(1) ... of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim.

. . . .

- (C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim.

. . . .

- (11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor ... unless such liquidation or reorganization is proposed in the plan.

The IRS submits that the Plan contains no provision for the payment of claims entitled to priority under 11 U.S.C. § 507(a)(8).

Pursuant to 11 U.S.C. § 1129(a)(9)(C), in order for a Plan to be confirmed, such Plan must provide for the payment within six years of the date of assessment of taxes entitled to priority under 11 U.S.C. § 507(a)(8). The IRS claim in this case includes an amount owed for priority taxes. The Plan fails to provide for any

payment of the IRS priority claim. Further the actual amount of the IRS priority claim cannot be determined until the debtor files five years of missing federal income tax returns.

The United States submits that the feasibility of the Plan cannot be determined until the true amount of the IRS priority claim is determined.

Finally, the IRS objects to the "super" discharge language contained in Article VIX of the Plan that expands the nature of the discharge provided in 11 U.S.C. § 1141.

CONCLUSION

WHEREFORE for the reasons set forth above, the United States of America respectfully requests that the Court enter an order denying confirmation of the debtor's Plan of Reorganization and for such further relief as may be just and equitable.

Dated: September 16, 2004

Respectfully Submitted

THOMAS B. HEFFELFINGER
United States Attorney

/e/ Roylene A. Champeaux
BY: ROYLENE A. CHAMPEAUX
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Attorneys for the United States
of America - IRS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11

DANIEL S. MILLER,

Case Number: 04-60106

Debtor.

UNSWORN DECLARATION
FOR PROOF OF SERVICE

I, Carla R. Kohl, employed by the Office of the United States Attorney, with office address 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, declares that on September 16, 2004, I served the Objections of the United States of America to the Confirmation of the Debtor's Chapter 11 Plan of Reorganization Dated August 4, 2004, Memorandum in Support of Objections of the United States of America to the Confirmation of the Debtor's Chapter 11 Plan of Reorganization Dated August 4, 2004 and proposed Order on the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

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UNSWORN CERTIFICATE OF SERVICE (CONTINUED)

In Re: **Daniel S. Miller**

Bankruptcy Case No. 04-60106

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Catherine Tucker, Esq.
Volvo Commercial Finance
P.O. Box 26131
Greensboro, NC 27402

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: September 16, 2004 Signed: /e/ Carla R. Kohl
CARLA R. KOHL

In Re:)
) Case No. BKY 04-60106
DANIEL S. MILLER,)
) Chapter 11 Case
Debtor.)

DENNIS D. O'BRIEN
United States Bankruptcy Judge